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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/728,342

12/03/2003

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88265-7072

8608

29157 7590 01/04/2007
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EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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2 MONTHS

01/04/2007

PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/728,342
Filing Date: December 03, 2003
Appellant(s): YOAKIM ET AL.

MAILED

JAN 04 2007

GROUP 1700

Robert Barrett
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 13, 2006 appealing from the Office action mailed April 18, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

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4,136,202

FAVRE

6-1979

4,253,385

ILLY

3-1981

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

Claims 1, 2, 4, 5, 11, 12, 14-16, 19, and 20 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "the capsule" in the last line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

Claims 1, 2, 4, 5, 11, 12, 14, 16, 19, and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Fond, U.S. Patent 5,897,899, in view of Favre, U.S. Patent 4,136,202.

In regard to claims 1, 2, and 20, Fond discloses a sealed cartridge comprising first and second sheet materials (col. 6, lines 9-20) joined to form a space therebetween, and ground coffee (3) located in the space between the sheets, with the first material (2) designed to admit water into the cartridge for extraction of the beverage from the coffee, and the second material (4) having properties to retain water or beverage in the cartridge until an overpressure of above 1 bar, and particularly within the range of 2-15 bar, is achieved, at which overpressure the second material will

rupture under the sole effect of the rise in pressure inside the cartridge to allow the extracted beverage to exit the cartridge (claim 1 and column 5, lines 38-45).

Many of the embodiments disclosed in Fond do not require that the relief surface elements puncture or tear the tear face (see column 8, lines 32-39; column 9, lines 4-16; column 10, lines 11-16 and 37-41). Therefore, it is interpreted that the tear face tears by the effect of the fluid overpressure alone. Since the cartridge of Fond functions in the same way as that claimed by appellant, it would have been expected that the cartridge of Fond would also result in a delayed effect in the passage of the beverage through the second sheet after water has been admitted into the cartridge, absent a showing to the contrary by clear and convincing evidence.

Fond discloses that there is no need for score lines in the cartridge (see Abstract, "which need have no marks for weakening"), but this does not suggest that the inclusion of score lines would interfere with the functioning of the cartridge. The use of score lines was notoriously well known in the art, as evidenced by Favre (column 2, lines 24-25). It would have therefore been obvious to include score lines in the cartridge of Fond in order to reduce the overpressure required to break the tear face.

In regard to claim 4, Fond discloses the first sheet (2) being made of a non-woven fiber or a semi-rigid material having a density within the claimed range that will permit water to enter the cartridge by gravity flow (column 6, lines 23-40).

In regard to claim 5, Fond discloses the first material (2) being aluminum with a thickness of at least 20 microns that is configured to allow puncturing by piercing means (20) in order for water to be admitted into the cartridge (column 6, lines 24-26).

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In regard to claims 11 and 12, Fond discloses the materials of the first (2) and second (4) sheets be made of oxygen barrier materials or non-oxygen barrier materials (column 6, lines 10-40).

In regard to claim 14, Fond discloses a cartridge that holds 5-20 grams of coffee, wherein the first (2) and second (4) sheet materials have polygonal shape (figures 1-3, column 5, lines 23-36).

In regard to claim 16, Fond discloses the first (2) and second (4) materials each being non-woven material (column 6, lines 23-40 and column 5, lines 49-59).

Claims 10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond in view of Favre, as applied above, in further view of Illy, U.S. Patent 4,253,385.

In regard to claim 10, Fond does not disclose a removable cover. Illy discloses a coffee cartridge comprising first and second sheet materials joined to form a space there between for holding coffee (21) and further discloses a removable cover (column 2, lines 1-2) for the cartridge. It would therefore be obvious to make the cover of the cartridge of Fond removable in order to make the cartridge reuseable.

In regard to claim 15, Fond discloses the second material (4) being filter paper (column 5, lines 60-65), but does not disclose the first material (2) being filter paper. However, it was well known to one of ordinary skill in the art to use filter paper as both the first and second materials when making a coffee cartridge, as evidenced by Illy (column 2, lines 10-13). Therefore, it would have been obvious to use filter paper as the

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first material, as well as the second material, since such a material in conventional in the art.

(10) Response to Argument

Appellant's arguments have been fully considered but they are not persuasive. Appellant argues that Fond fails to disclose or suggest a capsule with a second sheet material that allows the beverage to pass through it by effect of the fluid pressure alone. However, as addressed above, many of the embodiments disclosed in Fond do not require that the relief surface elements puncture or tear the tear face (see column 8, lines 32-39; column 9, lines 4-16; column 10, lines 11-16 and 37-41). Therefore, it is interpreted that the tear face tears by effect of the fluid overpressure alone. Since the cartridge of Fond functions in the same way as that of appellant, it would have been expected that the cartridge of Fond would also result in a delayed effect in the passage of the beverage through the second sheet after water has been admitted into the cartridge, absent a showing to the contrary by clear and convincing evidence. Further, although Fond may give preference to a foil of aluminum or plastic, as appelleant contends at the top of page 13 of the brief, Fond also discloses that paper alone can be used as the material in the cartridge (col. 6, lines 19-20). In fact, the paper can be multilayered with paper alone (col. 6, lines 19-20), despite appellant's belief to the contrary as set forth on page 14, 2d paragraph of the brief.

Appellant's discussion regarding the pressure at which the cartridge material in Fond ruptures (pages 13-14 of the brief) is without merit since Fond discloses that his materials can withstand a pressure above 1 bar, thus suggesting that at a pressure of

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as low as 2 bars rupture may occur: Fond's disclosure of a pressure range of 2-15 bars is merely a preferred limitation.

Despite the deficiencies of Favre noted by appellant in the last paragraph on page 14 of the brief, Favre is merely relied upon for the concept of including score lines in the cartridge material, if desired, to reduce the overpressure required to rupture the tear face of the material.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


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